COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company	**)**	**D.T.E. 01-108**

INITIAL BRIEF
OF THE
MASSACHUSETTS WATER RESOURCES AUTHORITY

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I. INTRODUCTION

On December 14, 2001, Boston Edison Company ("the Company," or "Edison") filed with the Massachusetts Department of Telecommunications and Energy ("DTE" or "Department") a revised tariff (M.D.T.E. No. 974) that included proposed new rates and charges for service under Rate WR, a tariffed rate governing service provided at 115 KV to the Deer Island wastewater treatment facility operated by the Massachusetts Water Resources Authority ("MWRA" or "the Authority"). The proposed new rate and charges, if allowed, would result in a 71.5 percent increase in the rates paid by the MWRA for the delivery of electric power. Exh. MWRA-LS, p. 5. The Company did not offer any explanation or support for the significant increase it had proposed other than a broad reference to the fact that the MWRA has recently elected to discontinue Standard Offer Service for the Deer Island facilities in favor of a competitive supply of generation services. The MWRA submits that the Department should reject Edison's proposal and, pursuant to the procedural schedule adopted in this proceeding, submits this Initial Brief to identify and explain the shortcomings of the Company's flawed proposal.

II. STATEMENT OF THE CASE

As stated above, on December 14, 2001, the Company filed with the Department a revised tariff (M.D.T.E. No. 974) that included proposed new rates and charges for service provided to the Deer Island wastewater treatment facility operated by the MWRA. The Company explained that the new tariff implemented two changes, "reflecting the fact that the … [MWRA] … elected to leave Standard Offer Service and has commenced receipt of generation supply from a competitive supplier." Exh. BEC-1, p. 1. On December 21, 2002, the MWRA filed motions with the Department, seeking (1) to intervene in the then pending investigation by the DTE in which Edison had made its filing (*Boston Edison Company*, D.T.E. 01-78) and (2) to have the operation of M.D.T.E. 974 suspended pending an investigation by the Department. On December 27, 2001, the Department initiated a separate investigation into M.D.T.E. No. 974 and suspended its operation until April 1, 2002. On January 11, 2002, the Attorney General gave notice of his intervention in the investigation and at a January 23, 2002, pre-hearing conference, a procedural schedule was adopted. Pursuant to that procedural schedule, on January 25, 2002, the MWRA and Edison each filed direct testimony concerning M.D.T.E. No. 974, and on February 1, 2002, Edison filed rebuttal testimony. An evidentiary hearing was held on February 14, 2002 during which both parties' witnesses were presented and examined by the other parties as well as by Department staff. Pursuant to the procedural schedule, Initial Briefs are to be filed by all parties on February 28, 2002 and Reply Briefs are to be filed on March 7, 2002. After reviewing the Initial Briefs filed by other parties, the MWRA will include within its Reply Brief proposed findings of fact and conclusions of law.

III. OVERVIEW

The MWRA urges the Department to reject Boston Edison's attempt to modify Rate WR to increase the level of the transition charge as a result of MWRA's election of a competitive source of supply for Deer Island. While the Company may yet identify some heretofore unstated basis for its proposal -- the December 14, 2001 filing referenced only the MWRA's election of a competitive supply and its witness, Mr. Henry LaMontagne, offered nothing more than a broad assertion of some requirement for a uniform transition charge -- it is plain that the Department must reject that proposal. The Department has already determined that the election of a competitive generation supplier by MWRA would not support the change proposed here. *Boston Edison Company*, D.T.E. 99-107 (Phase II), p. 10 (2000). That, however, is the sole fact offered by the Company to justify a 71 percent increase in the delivery charges for the Deer Island facility. Moreover, as is explained herein, out of an abundance of caution, the MWRA has also demonstrated that the Company's proposal flies in the face of the cost-basis for Rate WR and cannot reasonably be said to be necessary to achieve compliance with some legal requirement. Indeed, the only conclusion that can be drawn from record evidence is that the approximately 0.7¢ transition charge implicit in the current Rate WR is reasonable and that there is no cost support for the Company's proposal. There were compelling reasons for the Department's 1998 determination to refrain from incorporating a uniform transition charge in Rate WR and those reasons continue to apply today. In light of these factors, to say nothing of the harm to the development of a competitive retail market for power that would be occasioned by allowing such a result, MWRA urges the Department to reject Edison's proposal in clear terms so that the issue can be closed once and for all.

IV. BACKGROUND

A. Service By The Company To Deer Island and D.T.E. 90-288

Edison provides service to the MWRA's Deer Island wastewater treatment facility through a submarine cable that was installed and put into service in 1990. Prior to the installation of the cable, the Company did not have any means of serving Deer Island. Exh. RR-AG-1-A, p. 4. Pursuant to terms approved by the Department in *Boston Edison Company*, D.P.U. 90-288 (1991), the MWRA pays for the service it receives for its Deer Island facility under both an "Interconnection and Facilities Support Agreement" between the MWRA, Boston Edison, and Edison's wholly owned subsidiary, Harbor Electric Energy Company or "HEEC" as well as a Boston Edison retail rate schedule, Rate WR.

As the Company explained to the Department in the 1990 proceeding, the so-called "HEEC Agreement" provides the terms under which HEEC, a wholly-owned, single purpose subsidiary of Boston Edison, "would construct and operate the electric transmission facilities necessary for the delivery of power across Boston Harbor to Deer Island." It also provides the terms under which the MWRA pays for the use of those facilities. *Id.* p. 5. The agreement requires the MWRA to pay monthly capacity and support charges, which provide HEEC with, respectively, a return on and of its investment, net of taxes, as well as compensation for operations and maintenance costs. "The cost of capital rate is determined by a formula which assumes a capital structure of 80% debt and 20% equity, with a return on equity of 18.5%." *Id*. p 7. Although the charges paid by the MWRA under the HEEC agreement decline over time as the original cost of the facilities are depreciated, those charges continue to account for roughly one third of the cost to the MWRA for the electricity delivered to the Deer Island facility by Edison.

Exh. MWRA-LS, p. 6; Exh. DTE-4-04. At the current time, the MWRA incurs approximately 3.8¢/kWh for use of the cable. Tr. p. 137.

In D.P.U. 90-288, the Department also approved an "Electric Power Supply Agreement" that required the establishment of a specific rate, Rate WR, to provide "for the recovery of costs which the Company incurs in serving the MWRA's load on Deer Island in a manner consistent with the Company's other retail rates." RR-AG-1-A, p. 12. Rate WR was designed to be and was approved as a "cost-based rate." RR-AG-1-B, p. 52; *Boston Edison Company*, D.P.U. 90-288, p. 13 (1991). Although there appeared to be "dramatic differences" between Rate WR and the G-3 (large general service) rate, the Company explained that the two rates were designed consistently and based upon the same cost of service study. RR-AG-1-B, pp. 53-54. The "dramatic differences" reflected the "significant differences in providing service to the MWRA vis-à-vis other industrial customers." *Id*. In particular, Rate WR reflects the fact that "the MWRA with its Deer Island treatment facility does not require Boston Edison to incur any cost below the 115 kv voltage level" (other than a meter) as well as "a very unique set of load characteristics that we would expect from the Deer Island treatment facilities, unlike G-3 as a class and unlike any other customer of Boston Edison." *Id.*

B. Electric Restructuring and D.T.E. 96-23

Prior to the enactment of the Massachusetts Electric Utility Restructuring Act, St.1997, c. 164, Edison had entered into a so-called "Restructuring Settlement Agreement"[1] in 1997 that was submitted for Department approval and supported by a number of parties, including the Attorney General. The MWRA was not a party to the settlement and, as the Department has found, Rate

[1] Although not marked as an exhibit the 1997 Restructuring Settlement Agreement has been incorporated by reference into the record of this proceeding.

WR was not specifically covered by that agreement. In broad terms, the Settlement Agreement required Edison: (i) to divest its generation assets and return the proceeds to its customers, (ii) to provide its retail customers with an option either to purchase electricity from competitive suppliers or to accept Standard Offer generation service to be arranged by the Company, and (iii) to recover its transition costs through a uniform charge whose level was to be determined under a formula included in the Settlement Agreement. The Company's rates were structured so that all of the Company's customers that received Standard Offer service were assured of an inflation-adjusted ten percent rate reduction for seven years. During the course of the Department's review of the Settlement Agreement, Edison took the position that the load served under Rate WR was served under a "special contract" and not entitled to the otherwise generally applicable rate reduction.

While the MWRA intervened in that proceeding and argued that the Company's position was unlawful discrimination, the Department did not reach the merits of that dispute: the 1997 Restructuring Act included language that expressly included the Deer Island load within the coverage of the legislatively mandated rate reductions. G.L. c. 164, § 1B(b). In response to a Department request for a revised Rate WR tariff that achieved compliance with the Act, Edison proposed a fully unbundled rate that incorporated a separate transition charge at the "uniform" level as well as a negative distribution charge. Recognizing that "the unique load characteristics of MWRA's Deer Island facility and the corresponding relatively low average unit cost of service [would render inappropriate] a strict application of the unbundling method applied to other rate classes contained in the Settlement," the Department rejected the Company's proposal. Instead, the Company was directed to design a new Rate WR that achieved compliance with the Act and incorporated a bundled delivery charge and a separate Standard Offer.

C. The Company's Prior Claim of "MWRA Shortfalls" and D.T.E. 99-107

As part of its annual transition cost reconciliation filing, in 1999 the Company included a revenue adjustment for an amount that it referred to as the "MWRA Shortfall." The Company calculated the adjustment by multiplying Rate WR kWh sales times the difference between the uniform transition charge and its computation of the transition charge implicit in Rate WR. This "MWRA Shortfall Adjustment" was included as part of the Company's reconciliation of its transition charge revenues. *Boston Edison Company*, D.T.E. 99-107 (Phase II), p. 8 (2000). Although the Company did not propose that it would ever seek to collect this amount from the MWRA, the MWRA objected to the inclusion of such an item in the filing on the grounds that it was an impediment to MWRA's exercise of it's right to elect a competitive source of power. *Id.* Moreover, through testimony by Ms. Lee Smith, the MWRA also challenged the Company's computation of the distribution and transmission elements of Rate WR for purposes of determining the transition charge implicit in Rate WR.

While the Company did eventually propose a new transition charge revenue reconciliation method that eliminated the need for any "MWRA Shortfall Adjustment," and largely acceded to the MWRA's computation of unbundled elements for delivery charge, it subsequently withdrew the new reconciliation proposal. The MWRA, then, pursued its objection to the inclusion of the so-called "MWRA Shortfall Adjustment." In its decision, the Department rejected MWRA's concern that the withdrawal of the proposed new reconciliation method would render uncertain its future liability for transition charges in the event that it sought a competitive supply. The Department's explanation for its decision is as follows:

> The selection of a competitive supplier would not change the transition and distribution charges under Rate WR because the WR rate is not tied to the generation supply of MWRA's electricity costs. Therefore, MWRA's concern

> regarding its liability for transition charges if it seeks competitive supply is misplaced.

Id. p. 10.[2]

D. The Testimony In This Proceeding

In support of its proposal to unbundle Rate WR and to impose a so-called "uniform transition charge," the Company offered the testimony of Mr. Henry C. LaMontagne, the Director of Regulatory Policy and Rates for the regulated operating companies of NSTAR. In his testimony, Mr. LaMontagne indicated that M.D.T.E. 974 had been filed in response to the MWRA's election to leave Standard Offer Service for the Deer Island facility in favor of a competitive source of generation service. He explained that unlike the previously filed tariffs for Rate WR, M.D.T.E. 974 contained unbundled delivery, transmission and transition charges. Exh. BEC-2, pp. 4-5. In regard to whether the Department should approve the Company's proposal, Mr. LaMontagne alluded to "normal restructuring and ratemaking principles …, including … the imposition of a uniform transition charge" and asserted that:

> … the WR rate, which is a cost based rate like that for all other rate classes, must pay all rate components, including distribution, transmission, transition charge, energy efficiency and renewables calculated on the same cost-of-service basis for Rate WR as for other rate classes. The distribution component for the WR rate is lower than other classes, based on its unique cost-based characteristics. However, the non-bypassable, uniform charge mandated by statute and the Department's orders, should be paid in full by MWRA.

Exh. BEC-2, p. 8.

MWRA sponsored the testimony of Ms. Lee Smith to explain why Edison's proposal to modify Rate WR to include a "uniform" transition charge is inappropriate and should be

[2] In the next subsequent reconciliation filing, the Company reached a settlement agreement with the Attorney General to adopt the new method that negates the need for any "Shortfall" adjustment, but , notwithstanding the Department's guidance in D.T.E. 99-107, it continued to assert its position that Rate WR would be modified if the MWRA elected to leave Standard Offer Service.

rejected. Ms. Smith also recommended an approach to unbundle the distribution, transmission and transition charge components of Rate WR in a manner consistent with the costs of providing service under that rate and the Department's past rulings in regard to that rate. Exh. MWRA-LS. Ms. Smith is a managing consultant at LaCapra Associates with twenty years of experience in utility economics and regulation, including three years as the Director of Rates and Research for the Department.

To put the question of the appropriate level of the Rate WR in context, Ms. Smith described the reasons why she believes the load covered by Rate WR is unique among Boston Edison's customers and why the current level of Rate WR is fair to the Company's other customers. She explained that taken together with the charges incurred under the HEEC agreement and the additional amounts paid for the on-island backup generation required by the MWRA, Rate WR was designed to and does "provide for all Boston Edison's costs of serving the MWRA Deer Island load." She also explained "that there are valid reasons why Rate WR has had a lower transition charge than other customers, and [that] those reasons continue to apply here." *Id.* pp. 2, 4. Ms. Smith explained that at the time the Company's restructuring plan was reviewed by the Department, the sum of Edison's proposed unbundled transition cost, standard offer, and transmission charges alone (*i.e.*, without a charge for distribution services, energy efficiency or renewables, much less a ten percent reduction), exceeded the then current level of the cost-based Rate WR, and that this fact caused the Department to reject the application of the uniform transition charges required under the Company's restructuring settlement and to, instead, adopt a bundled rate design for Rate WR. Exh. MWRA-LS, pp. 4-5.

In these circumstances, Ms. Smith opined that the Company's current proposal was unreasonable. It ignored the fact that the existing design of Rate WR covered all of the costs of

providing service to the Deer Island facility that are not otherwise borne by the MWRA through the HEEC agreement or the generation purchase and that that design included a substantial contribution towards the Company's transition costs: 0.75¢/kWh. *Id.*, p. 6. She also explained that the current level of Rate WR was fair to the Company's other customers and that approval of the Company's proposal to modify Rate WR would result in inappropriate and irrational discrimination against the MWRA. *Id.*, pp. 7-8. Finally, Ms. Smith explained that the approval of the Company's proposal to increase the MWRA's Deer Island delivery bill by 70 percent as a result of MWRA's election of a competitive supply would chill the development of a competitive retail market for power and would be completely inconsistent with the Department's earlier finding that "[t]he selection of a competitive supplier would not change the transition and distribution charges under Rate WR." *Id.*, pp 8-9, *quoting Boston Edison Company*, D.T.E. 99-107 (Phase II), p. 10 (2000).

Ms. Smith also identified and explained a method by which the Department could unbundle Rate WR in a manner that would be consistent with both the cost basis of that rate and the Department's earlier decisions. In particular, Ms. Smith recommended that the Department establish unbundled distribution and transmission charges at levels determined by the methodology adopted in D.T.E. 99-107 and treat the residual (less the applicable energy efficiency and renewables charges) as the appropriate transition charge: 0.75¢ (updated to 0.698¢ in Exh. DTE-5-1). Exh. MWRA-LS, pp. 10-11. She recommended that the level of this unbundled Rate WR transition charge then vary in the future in proportion to the uniform transition charge. *Id.*, p. 11.

Although Mr. LaMontagne did provide rebuttal testimony, he did not dispute Ms. Smith's assertions that the WR Rate was a cost-based rate that recovered fully all applicable costs, that

the favorable load characteristics of the Deer Island load had resulted in a lower allocation of responsibility for generation costs, and that allowing the Company's proposal would chill the development of a retail market. Instead, his rebuttal was largely limited to challenging the relevance of Ms. Smith's testimony on the totality of costs incurred by MWRA in receiving retail electric service from Edison.[3] Exh. BEC-3, pp. 2-3.

V. THE COMPANY HAS NOT ESTABLISHED ANY BASIS FOR AN INCREASED TRANSITION CHARGE AND THE DEPARTMENT SHOULD REJECT THE PROPOSED INCREASE TO RATE WR

The Company has not established any basis to increase Rate WR through an increased transition charge and, thus, the Department should reject that proposal. Not only is there no cost basis for Edison's proposal to increase Rate WR, but there is no merit to the Company's assertion that a uniform transition charge is somehow mandated or otherwise required by the General Laws, the Department's regulations or its past decisions. The plain facts are that the Department has already recognized:

- ?? that the WR Rate is a cost-based rate;
- ?? that Edison's 1996 Restructuring Settlement Agreement does not specifically cover rate WR;
- ?? that the "unique load characteristics of MWRA's Deer Island facility and the corresponding relatively low average unit cost of service" render inappropriate the application of the settlement's uniform transition charge approach; and
- ?? that as a cost of service rate, "the selection of a competitive supplier [will] not change the transition and distribution charges under Rate WR."

[3] Mr. LaMontagne also characterized Ms. Smith observation that the MWRA pays a return on equity under the HEEC a "false assertion." Exh. BEC-3, p. 3. It is clear, however, both from Mr. McCall's 1991 testimony as well as the Company's subsequent response to discovery, the that was anything but false. *See* Exh. DTE-3-3; RR-AG-1-A, p. 7.

Nothing has changed to alter the validity of these conclusions. MWRA has elected to purchase its generation services from a competitive supplier, but this is not an appropriate basis for an increase in the WR Rate transition charge. While Boston Edison may argue that the MWRA's decision to leave Standard Offer service could be construed to remove it from the coverage of the rate cap provision of G.L. c. 164, § 1B(e), regardless of whatever merits that argument may have, it is clear that MWRA's action alone does not and cannot provide support for an increase in the WR Rate transition charge. In these circumstances, the MWRA submits that the Department should reject the Company's proposal.

A. The Company's Proposal Is Inconsistent With The Cost Of Service Basis Of Rate WR

The Company's proposal to increase the Rate WR transition charge to the level of the so-called "uniform transition charge" is not supported by any evidence. In the absence of such evidence, however, there is no basis for the proposed rate increase and it should be rejected As Ms. Smith has explained, Rate WR was designed to be and was, in fact, a cost-based rate. She explained the sound factual reasons why the WR Rate has and should continue to have a lower transition charge than that in other rates. Ms. Smith's conclusion is supported by the Department's earlier decisions concerning Rate WR as well as by past testimony from Company officials and past Edison cost of service studies. In these circumstances, the MWRA submits that the Department should reject out of hand the Company's proposal to modify Rate WR to increase the transition cost responsibility allocated to the Deer Island facility.

First, the record in this proceeding demonstrates beyond dispute that Rate WR was intended to be and was, in fact, a cost-based rate. In his pre-filed testimony during the Department's original investigation into the arrangement under which Edison was to provide power to Deer Island, the Company's witness, Mr. Francis X. McCall, then manager of the

Business Planning Department, explained in unambiguous terms that the rate "provides for the recovery of costs which the Company incurs in serving the MWRA's load on Deer Island in a manner consistent with the Company's other rates." RR-AG-1-A, p. 12.[4] Mr. McCall not only reiterated this position during the course of the evidentiary hearings, but also explained the factual basis for the differences between Rate WR and the G-3 Rate, also a cost based rate: the unique load characteristics referenced by the Department in its decisions in *Boston Edison Company*, D.P.U. 90-288, p. 13 (1991) and *Boston Edison Company*, D.P.U./D.T.E. 96-23, pp. 36-37 (1998) and discussed by Ms. Smith in her testimony.[5] *Compare* Exh. MWRA-LS, p. 3-4 *with* RR-AG-1-B, p. 54 ("those kind of characteristics just aren't reflected in the G-3 class certainly and we don't believe, really, by any other customer"). The Department's past decisions also recognize that Rate WR is a cost-based rate designed to recover allocated costs. *See Boston Edison Company*, D.P.U. 90-288, p. 13 (1991); *Boston Edison Company*, D.P.U. 96-23, p 36 (1998). Thus, there is no basis for any argument that Rate WR should be considered to be some form of "economic development" or other discounted special contract rate.

Second, the record also demonstrates that it was appropriate to and that the Company did, in fact, allocate a proportionately smaller portion of its generation costs to Rate WR. The embedded cost of service studies submitted by Boston Edison in both its 1992 and its 1996 rate proceedings show that the generation related costs allocated to Rate WR were more than 8 mils

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[4] The testimony of the Company's other witness at the hearings in D.P.U. 90-288, Mr. Marc Alpert also supports the conclusion that the WR Rate was a cost of service rate based upon and reflective of the same cost of service study as the G-3 Rate. RR-AG-1-B, pp. 65-66.

[5] Ms. Smith explained the Deer Island facility's unique load characteristics as follows:

> The electric service demands of the Deer Island facility peak following heavy rain or spring snow melt when other BECO loads are otherwise very low. The facility's demand is relatively low during hot summer days when the BECO system peak typically occurs.

Exh. MWRA-LS, p. 3.

less than those allocated to other classes.[6] Moreover, while both Mr. LaMontagne in this proceeding and Mr. McCall in 1991 acknowledged that a customer like the MWRA would be given specific consideration in the Company's generation supply planning, Tr. pp. 45-46; RR-AG-1-B, pp. 56-67, it is clear that nearly all of Edison's transition costs were "committed" before the load serve on the WR rate was even contemplated. Exh. MWRA-LS, p. 7. Thus, few, if any, of Edison's transition costs were incurred in contemplation of serving the load that is now served under Rate WR. However, even without giving any consideration to this latter fact, the record here establishes the compelling fact that there is no basis for an allocation of responsibility for generation costs to the load served under Rate WR, in an amount that would justify the imposition of the "uniform transition charge." Those generation costs were not allocated to Rate WR before restructuring and they should not now be shifted onto the MWRA in the name of "uniformity." As Ms. Smith explained, the MWRA has and continues to pay the full cost of the unique aspects (a dedicated submarine cable and on-island backup generation facilities) of providing service to Deer Island, Exh. MWRA-LS, pp. 6-7; Tr. pp. 137-138, and it would be fundamentally unfair and inappropriate to now shift onto its shoulders responsibility for costs not otherwise allocable to its load. There is only one conclusion that the record can support: the unique characteristics of the Deer Island load, that resulted in the pre-1998 Rate

[6] The results in the unit cost tables of these two studies provide the following information:

Item	Total Electric (mils/kWh)	MWRA 115K (mils/kWh)	Difference (mils/kWh)
92-92 Production Cost	42.953	39.5	3.453
92-92 Commodity Cost	30.288	26.65	4.638
92-92 Total			8.091
96-23 Production Cost	46.112	39.652	6.460
96-23 Commodity Cost	28.757	26.864	1.893
96-23 Total			8.353

Source: Schedule 20 in the 1992 COS (RR-MWRA-2, Schedule 20, pp. 2A and 2B) an the 1996 COS (Exh. DTE-1-4 (attachment B, Schedule 20, pp. 1A))("Commodity Cost" equal to total commodity divided by GWH).

WR having been allocated between 7.3 and to 8 mils less in generation costs, preclude an increase in the WR Rate to accomplish the imposition of the Uniform Transition Charge.

B. The Department Has Not Required And Need Not Now Require The Inclusion Of A Uniform Transition Charge In Rate WR

Notwithstanding Mr. LaMontagne's frequent references to and the Company's seemingly exclusive reliance upon the notion that there is some legal requirement that the Department impose uniform transition charges,[7] there is simply no such legal requirement. The terms of the Company's 1997 Restructuring Settlement Agreement do specify the use of a uniform transition charge, but the Department has already ruled that the Settlement Agreement does not cover Rate WR. *Boston Edison Company*, D.P.U./D.T.E. 96-23, p. 37, n. 22. Neither the General Laws, nor the Department's regulations, require the imposition of a uniform transition charge. Moreover, as was demonstrated in the preceding section of this brief, pp. 12-15, *supra*, the facts of this case demonstrate that requiring the imposition of the uniform transition charge would shift other customers' cost responsibilities onto the MWRA. In these circumstances, the MWRA submits that there were compelling reasons for the Department's 1998 determination to refrain from incorporating a uniform transition charge in Rate WR and that those reasons continue to apply today. The Department was correct in its earlier decision and the record here supports the continuation of the inclusion in Rate WR of a transition charge in an amount less than the "uniform charge" proposed by Edison.

Other than the terms of a settlement agreement that the Department has already determined does not necessarily apply here, the MWRA is unaware of any requirement of general applicability for a uniform transition charge. G.L. c. 164, § 1G(a)(1) provides that

[7] This notion, together with the fact that the MWRA has elected a competitive supply of power, are the only grounds offered by the Company to support its proposal.

transition charges are to be non-bypassable, but does not require or in any way suggest that transition charges must be uniform, either for all customers or all customer classes. While there is also no requirement for a uniform access charge in the Department's restructuring regulations, 220 C.M.R. 11, the Department's 1996 Model Rules and Legislative Proposal was express in requiring that transition charge mechanisms were to be both non-bypassable and "consistent with existing methods of cost functionalization, classification, allocation, and rate design for each rate class." *Electric Utility Restructuring Plan: Model Rules and Legislative Proposal,* D.P.U. 96-100, p. 291 (1996)(the quoted language also appears in the proposed 220 C.M.R. 11.03(3)(v)(i)). The Department's 1998 decision and the approach recommended here are consistent with this guidance.

While the Department did reject an earlier request for the approval of a system of class specific transition charges that provided a substantial discount to customers served under special "economic development" contracts, that had been approved with the express condition that they be subject to the generally applicable stranded cost charge, *Fitchburg Gas & Electric Light Company*, D.P.U./D.T.E. 97-115/98-120, pp. 39-40, 47-48 (1999), that decision should not be read to require a uniform transition charge in the circumstances presented here. The wording of the Department's decision itself in the *Fitchburg* case manifests a willingness to make case-by-case determinations of the appropriateness of allowing a non-uniform charge, *id.* p. 48 ("… the Company's explanation for determining the differing access charges for the EBS and special contract customers is not compelling"), and the circumstances here do present a compelling explanation for the continued application of a reduced transition charge.

Rate WR is not in any way a "discounted rate" and, as has been demonstrated, there is a very real cost basis for a reduced allocation of responsibility for transition costs. Moreover, the

same unique load characteristics that provide a cost basis for a reduced allocation of transition cost responsibility also result in the MWRA's Deer Island load being in its own rate class and, under the Company proposal, unable to continue to receive a reduced transition cost liability in same manner as a G-3 customer with favorable load characteristics. Ms. Smith explained that this would result in unreasonable and irrational discrimination against the MWRA. The Department was aware of these circumstances when it reached its 1998 determination and the MWRA submits that these circumstance continue to providing compelling reasons for the inclusion of a reduced transition in Rate WR.

C. The Department Has Already Rejected The Argument That Continuation Of The Existing Rate WR Distribution Or Transition Charges Is Dependent Upon The MWRA Remaining On Standard Offer Service

As was described earlier, the Department has already determined that an election by the MWRA to leave Standard Offer Service "would not change the distribution or transition charges under Rate WR." *Boston Edison Company*, D.T.E. 99-107 (Phase II), p. 10 (2000). The Company's proposal here, however, is based entirely on just that occurrence, *i.e.*, the election by the MWRA to leave Standard Offer Service on November 1, 2001. Thus, having shown that there are no other grounds that support the Company's proposal, the MWRA submits that the Department must rejected Edison's current proposal. "A party to a proceeding before a regulatory agency such as the Department has the right to expect and obtain reasoned consistency in the agency's decisions." *Boston Gas Company v. Department of Public Utilities*, 367 Mass. 92, 104, 324 N.E.2d 372, 378 (1975). The Department's determination in D.T.E. 99-107 was made in response to the MWRA's stated concerns about its transition cost responsibility in the event it sought a competitive supply.[8] In its decision in D.T.E. 99-107, the Department

[8] The airing of the this issue in D.T.E. 99-107 as well as the Department's determination there betrays the one-sided nature of the "recognition" Edison claims has been given "that the rate design for Rate WR would be subject

indicated that MWRA's concerns were "misplaced," explaining that "the WR rate is not tied to the generation supply of MWRA's electricity costs." *Boston Edison Company*, D.T.E. 99-107, *supra*. In reliance upon that decision, the MWRA sought and acquired a competitive source of generation and is entitled to reasoned consistency in the Department's approach to this issue.

VI. CONCLUSION

Wherefore, for all of the foregoing reasons, the MWRA submits that the Department should reject Boston Edison's proposed new tariff, M.D.T.E. No. 974 and should either order the Company to maintain M.D.T.E. No. 976 in effect or direct the Company to modify that tariff to incorporate unbundled delivery service elements determined by the method recommended by Ms. Lee Smith.

Respectfully submitted,
MASSACHUSETTS WATER
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to change at such time as the MWRA elected to leave Standard Offer Service." Exh. BEC-1, p.2. Notwithstanding Edison's efforts to imply otherwise, the MWRA has never shared this view and the clear language in the Department's decision in D.T.E. 99-107 demonstrates that the Company was alone in its recognition.